

### **REMARKS/ARGUMENTS**

Claims 1, 3-7, 9-11, 13-16, 19-22, 25, 27, 29 and 86 remain in this application. No claims are currently amended.

The Examiner has rejected claims 1, 3-7, 9-11, 13-16, 19-22, 25, 27, 29 and 86 under 35 U.S.C. 103(a) as being unpatentable over Nelis (US 5,961,270). Applicants traverse this rejection and offer the following comments.

Nelis does not disclose the following claimed features:

1. Transferring the bacteria from the first filter means to a broth (claim 1b);
2. Separating the bacteria from the broth using a second filter means (claim 1c);
3. The features of dependent claims 3-7; and,
4. The features of independent claims 29 and 86, particularly 29 g and 86 c-e and g.

The fact that the instant specification discloses that the filter means may be present in the broth is irrelevant. Claim 1 stipulates that the bacteria are transferred from the first filter means to the broth. This precludes the formation of microcolonies on the first filter means. Nelis is concerned throughout with the counting of microcolonies. Nelis therefore teaches away from this claimed step and cannot render it obvious.

If one were to filter the medium of Nelis with a second filter means, as the Examiner suggests, the second filter means would not contain microcolonies. As a result, the method of Nelis would not work if a second filter means were used in this manner. Nelis therefore teaches away from the use of a second filter means.

Applicant submits that the limitations of at least 29 g and 86 c-e and g are not taught or suggested by Nelis.

The Examiner requests that the surprising evidence of superior efficacy be provided in a Declaration. Applicant points out that this evidence was presented in the specification as filed, accompanied by a signed Declaration from the inventors. No further Declaration is needed to provide the evidence. Applicant therefore reiterates that Table 1 demonstrates surprising efficacy and supports a finding of non-obviousness.

In summary, Applicants respectfully submit that the Examiner has failed to satisfy the basic criteria needed to establish a *prima facie* case of obviousness. Applicants therefore respectfully request that the rejections under 35 U.S.C 103 (b) be withdrawn and that this case proceed to allowance.

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In view of the above amendment and remarks, reconsideration on all claims is respectfully requested. In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,  
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